IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
v.	:	NO. 06-319
LEONARD P. LUCHKO MARK C. EISTER	:	

Memorandum and Order

YOHN, J. November ___, 2006

The United States moved for a hearing regarding possible conflicts of interest in the representation of defendants Leonard P. Luchko and Mark C. Eister ("defendants"). After considering the government's motion, the defendants' responses in opposition thereto, and the government's reply, the court held a hearing on October 12, 2006 to determine the extent of any actual or potential conflicts of interest that could serve as a basis for disqualifying one or both of the defendants' attorneys, and to colloquy the defendants as to a waiver of any such conflict. For the reasons stated herein, the court finds that any actual or potential conflict has been sufficiently waived by each defendant and the court will not disqualify either defendant's attorney based on a conflict of interest.

I. Background

Defendants were indicted for conspiracy to obstruct justice and substantive counts of obstruction of justice, arising out of their employment with the State Senate of Pennsylvania ("Senate"). James C. Schwartzman, Esq., of Stevens & Lee., P.C., represents defendant Luchko;

Brian J. McMonagle, Esq., of McMonagle, Perri & McHugh, represents defendant Eister. Both parties agree that while the defendants were employees of the Senate of Pennsylvania, the Senate paid for defendants' counsel. (Gov't's Mot. at 1; Luchko's Answer at 4, 28; Eister's Answer at 4.) The government contends, however, that this payment was in reality effectuated by the Senate Democratic Appropriations Committee, an entity controlled by the Senator who is the primary target of the overall investigation. (Gov't's Mot. at 1, 3.) The parties also disagree as to how the defendants chose their counsel. The government believes that Sprague and Sprague, counsel for the Senator, chose the attorneys for the defendants, all of whom then entered into a joint defense agreement. (*Id*.) Defendant Luchko maintains that Schwartzman was suggested to him by other Senate employees, including individuals who work for the Senator. (Luchko's Answer at 4, 28.) McMonagle was first contacted by Mark Cedrone, Esq., a well-known member of the criminal bar, who stated he was recommending McMonagle to represent Eister. McMonagle was then contacted by someone from Sprague and Sprague, the law firm that represents the Senator, who recommended him to Eister. At the hearing, Eister explained that he then researched McMonagle's reputation using the internet.

Both attorneys Schwartzman and McMonagle warrant that their receipt of funds from the Senate satisfies the dictates of the Pennsylvania Rules of Professional Conduct, as adopted, Local Rule of Civil Procedure 83.6 and Local Rule of Criminal Procedure 1.2. In other words, they aver that payment of their legal fees by a third party would not interfere with either attorney's professional judgment. (Luchko's Answer at 6, 16; Eister's Answer at 5.) Both attorneys also stated that they discussed this matter with their respective clients. (Luchko's Answer at 6, 16; Eister's Answer at 5.)

After the defendants were indicted and promptly resigned from their employment with the Senate on May 31, 2006, the Senate ceased paying their legal bills. A legal defense trust fund ("trust") was created to pay the legal bills of the defendants. (Luchko's Answer at 6, 17; Def.'s Supp. Br. at 1.) The government believes the Senator may be engaged in the effort to create the trust and to raise money for the trust to pay the defendants' attorney fees. (Gov't's Mot. at 4; Gov't's Supp. Br. at 3-4.) At the hearing, Schwartzman revealed that this trust is administered by three independent trustees, J. Whyatt Mondesire, Robert Curran, Esq., and Rhonda Cohen, Esq., and that Ralph Teti, Esq., is counsel for the trust. Both defense attorneys averred that, to date, they have not accepted payment from the trust fund, and do not know how, or by whom, the trust was being funded. At the hearing, McMonagle, Eister's attorney, requested appointment as Eister's attorney pursuant to the Criminal Justice Act ("CJA"), as an alternative to payment by the trust fund, as Eister is not currently employed. He stated that with such appointment he would neither request nor accept any money from the trust. Since that time, the court has appointed McMonagle as a CJA attorney. Schwartzman did not make a similar request, as he did not believe the legal defense fund posed an unwaivable conflict and because Luchko is currently employed so that it was not likely that he would qualify for a CJA attorney.

The government has also asserted two other sources of potential conflict related to Schwartzman: Schwartzman's concurrent representation of "Witness A" and the Senator's involvement with Schwartzman's law firm, Stevens & Lee. In Luchko's answer, Schwartzman explained that at the time Luchko retained Schwartzman, Schwartzman also represented Witness A, a non-target fact witness in the investigation. (Luchko's Answer at 4.) Schwartzman determined that there would not be a conflict in representing both Luchko and Witness A;

discussed the matter with both clients; and informed Assistant United States Attorney John Pease of the dual representation, to which Pease agreed that "there was not even a remote possibility of any conflict." (*Id.* at 5.) The government admits that it originally believed that Witness A had no relevant information regarding defendant Luchko but, based on an email that was not previously available and only recently provided to investigators by a cooperating witness, may now call Witness A as a witness at Luchko's trial. (Gov't's Reply at 6). That would place Schwartzman in the position of cross-examining a former client at the trial of another client. At the hearing, the government explained that calling Witness A was only a possibility. Schwartzman also let it be known that as soon as he learned of any potential for conflict based on that email, he advised Witness A to retain separate counsel, which Witness A has done. He affirmed that he has not received any confidential information from Witness A regarding the email at issue.

Second, the government posited that the Senator and the bank of which he is the chairman and the single largest shareholder are both clients of Stevens & Lee, Schwartzman's law firm. (*Id.* at 7.) Schwartzman explained that as far as he is aware, the Senator is not represented by Stevens & Lee in his individual capacity. The law firm does, however, represent the bank of which the Senator is Chairman of the Board and a large shareholder; the Senator will stand to receive a large sum of money when the current proposed sale of this bank is completed.

The government has highlighted its particular concern that it may be in the best interest of defendants to cooperate, but such cooperation may be adverse to the Senator's interest. The government has informed attorneys for the defendants that it is interested in engaging in a proffer with either defendant or both. Both attorneys have maintained the request for their clients to

receive immunity or a guarantee of probation in return for cooperation, but the government has rejected that request, at least until after a proffer has been made by the individual defendants.

At the hearing on October 12, the court engaged in a colloquy with both defendants wherein they each knowingly, intelligently and voluntarily waived conflicts related to the Senate's payment of their legal fees during their employment with the Senate. Defendant Luchko also knowingly, intelligently and voluntarily waived any actual or potential conflict related to Stevens & Lee's representation of the bank and the payment of Schwartzman's legal fees by the legal defense fund. Given the lack of specific information concerning the Senator's involvement with the legal defense fund, the court presented the matter to Luchko for waiver using hypothetical facts–that the Senator created the trust fund and is heavily involved in the trust fund by soliciting contributions for the fund or his friends are donors to the fund. The government did not object to the court's acceptance of all waivers, but believed the issue of the legal defense fund remained problematic. The court ordered both parties to file supplemental briefs on the issue of the legal defense fund and the propriety of such a fund in the instant matter.

II. Standard

The Third Circuit has made clear that "[t]he Sixth Amendment guarantee of effective assistance of counsel includes two correlative rights, the right to adequate representation by an attorney of reasonable competence and the right to the attorney's undivided loyalty free of conflict of interest." *United States v. Moscony*, 927 F.2d 742, 748 (3d Cir. 1991) (citations omitted). "However, another right is derived from the right to effective assistance of counsel, for the 'the right to counsel being conceded, a defendant should be afforded a fair opportunity to

secure counsel of his own choice.'" *Moscony*, 927 F.2d at 748 (citing *Powell v. Alabama*, 287 U.S. 45, 53 (1932)). "Thus a presumptive right to counsel of one's choice has been recognized as arising out of the Sixth Amendment." *Moscony*, 927 F.2d at 748 (citing *Wheat v. United States*, 486 U.S. 153, 159 (1988)). However, this presumption is only that, and may be overcome "not only by a demonstration of actual conflict but by a showing of serious potential for conflict." *Wheat*, 486 U.S. at 164; *Moscony*, 927 F.2d at 750. Determining whether such a conflict exists under this standard "must be left primarily to the informed judgment of the trial court." *Wheat*, 486 U.S. at 164. However, as noted by the Third Circuit, this "is no simple task...[t]he likelihood and dimensions of nascent conflicts of interest are notoriously hard to predict, even for those thoroughly familiar with criminal trials." *United States v. Voight*, 89 F.3d 1050, 1076 n.12 (3d Cir. 1996) (citing *Wheat*, 486 U.S. at 162-63).

"The district court's power to disqualify an attorney derives from its inherent authority to supervise the professional conduct of attorneys appearing before it." *United States v. Miller*, 624 F.2d 1198, 1201 (3d Cir. 1980). The Supreme Court has held, "Federal courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them," thus the district court may even override a defendant's waiver of his attorney's conflict of interest. *Wheat*, 486 U.S. at 160. The Pennsylvania Rules of Professional Conduct, 204 Pa. Code § 81.4 ("RPC"), provide a guide for considering whether ethical standards have been maintained in a given situation. *See In Re Grand Jury Investigation*, 2006 U.S. Dist. LEXIS 57756, at *11 (E.D. Pa. May 16, 2006) (finding that the RPC provide a useful template against which to measure the conduct of lawyers subject to a disqualification motion); *United States v. Stout*, 723 F. Supp. 297,

303 (E.D. Pa. 1989) (using RPC to determine ethical considerations governing disqualification motion). The Local Rules of Civil and Criminal Procedure for the Eastern District of Pennsylvania require attorneys practicing in the district to comply with the RPC. Local R. Civ. P. 83.6; Local R. Crim. P. 1.2. However, "[t]he disqualification of a defendant's chosen counsel need not be . . . predicated on a finding of a specific RPC violation." *Voight*, 89 F.3d at1076 n.12. "The district court has independent interests in protecting its judgments against later collateral attack, preserving the integrity of its proceedings, and protecting the truth-seeking function of the proceedings." *Id.* at 1076 (citations omitted). Therefore, a court must investigate allegations of possible impropriety surrounding the representation of defendants to determine whether there is any conflict of interest and whether, even if such a conflict is waived, the court is obligated to disqualify either defendant's attorney.

III. Third Party Payment of Legal Fees

The Supreme Court has acknowledged "the inherent dangers that arise when a criminal defendant is represented by a lawyer hired and paid by a third party . . . One risk is that the lawyer will prevent his client from obtaining leniency by preventing the client from offering testimony against his former employer or from taking other actions contrary to the employer's interest." *Wood v. Ga.*, 450 U.S. 261, 268-269 (1981). The Court quoted with approval a state court case, stating "it is also inherently wrong for an attorney who represents only the employee to accept a promise to pay from one whose criminal liability may turn on the employee's testimony." *Id.* at 269 n.15 (quoting *In re Abrams*, 266 A. 2d 275, 278 (N.J. 1970));*see also, United States v. Chapman*, 1999 U.S. Dist. LEXIS 13675, at *9 (E.D. Pa.. Sept. 8., 1999)

(disqualifying defendant's attorney after finding that the attorney "would be placed in the position of counselling [sic] a potential witness to provide evidence adverse to the person who is the source of the money used to pay his professional fee").

RPC 1.7 and 1.8 are the relevant ethical rules for ascertaining whether the lawyer has a conflict based on his relationship with a third party. RPC 1.7 provides:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
> (1) the representation of one client will be directly adverse to another client; or
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, *a former client or a third person or by a personal interest of the lawyer*.
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> (2) the representation is not prohibited by law;
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
> (4) each affected client gives informed consent.

§ 81.4 (Rule 1.7) (emphasis added). However, RPC comments make clear: "In some cases, the risk may be so severe that the conflict may not be cured by client consent." § 81.4 (Rule 1.10, cmt. 6). Rule 1.8(f) deals more directly with the situation where a lawyer receives payment for representing one client from a third party:

> (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
> (1) the client gives informed consent;
> (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

> (3) information relating to representation of a client is protected as required by Rule 1.6.[1]

§ 81.4 Rule 1.8(f). The comments to Rule 1.8 state:

> Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client.

§ 81.4 (Rule 1.8, cmt. 11).

A. Senate's Payment of Defendants' Legal Fees

Luchko asserts that the "Senate has a long standing policy of paying for its employees to retain the counsel of their choice to represent the employees in matters arising from performance of the employee's job" (Luchko's Answer at 13) and, moreover, that this practice is commonplace across the United States (*Id.* (citing *United States v. Stein*, 435 F. Supp. 2d 330, 335 (S.D.N.Y. 2006).) Counsel for both defendants have affirmed in their papers and before the court that their representation meets the dictates of RPC 1.6, 1.7 and 1.8. (Luchko's Answer at 13; Eister's Answer at 5.) Both defendants have knowingly, intelligently and voluntarily waived any actual or potential conflict relating to this time period. Given that it is the standard practice of the Pennsylvania Senate to pay the legal bills of all of its employees when they are under investigation for actions arising out of their employment, even if the Senator had to approve or initiate payments via his role as Chair of the Democratic Appropriations Committee, the court finds that there is no actual or potential conflict of interest with regard to the standard procedures

[1]Rule 1.6 concerns duty of confidentiality of information and exceptions thereto.

and, to the extent there is, the waivers of both Luchko and Eister are sufficient to overcome any actual or potential conflict, and are accepted.

B. The Payment of Defendant Luchko's Legal Fees by the Legal Defense Fund

At this time, a legal defense trust fund has been established to pay the legal fees of defendants Luchko and Eister. As Eister's attorney has been appointed as a CJA attorney whose fees will be paid by the federal government for his representation after May 31, 2005, any conflict stemming from the legal defense fund is moot in regard to Eister. The government believes the legal defense fund's payment of fees for Luchko is akin to the direct payment of legal fees by a third party whose interests are adverse to the beneficiary of those payments. (Gov't's Supp. Br. at 3.) In other words, the establishment of a trust fund does not change the calculus. (*Id.*) Schwartzman contends that any acceptance of fees from the trust will satisfy the dictates of Rule 1.8(f). (Def's Supp. Br. at 3.) Further, the Senator would not be the person authorizing payments, but rather it would be the independent trustees who have a fiduciary duty to Luchko as beneficiary of the trust. (*Id.* at 4.) Schwartzman also avers that he discussed all of the relevant issues with Luchko such that Luchko could make an informed determination as to whether he would permit the legal defense fund to pay any portion of his legal fees. (*Id.*) Specifically, Schwartzman states:

> Luchko has a fee agreement obligating Luchko (and Luchko alone) to pay fees incurred in the defense of the instant matter. However, Schwartzman has discussed with Luchko the relevant factors necessary for Luchko to make an informed determination regarding whether Luchko wants to authorize the trust fund to pay any portion of his legal fees. Specifically, [Schwartzman] explained (i) the trust fund would not exercise any control or influence over the representation, (ii) Schwartzman would not accept any fees from the fund if payment is conditioned on Luchko or Schwartzman taking any certain position in Luchko's defense, and (iii) Schwartzman has no duty of loyalty to the trust fund, the trustees or any contributors to or promoters

> of the fund (the identities of whom, if any exist, are at this point unknown to Schwartzman). Instead Schwartzman has undivided loyalty to Luchko.

(*Id.* at 5)

As it would be naive to believe the Senator has had no involvement in setting up or soliciting contributions to the trust, and since he is a possible co-defendant in this case, there is an actual conflict of interest should Schwartzman accept payment of legal fees from the trust fund. However, the court finds that Schwartzman has diligently adhered to the dictates of the RPC in dealing with this matter and has done everything to satisfy his ethical obligations up to this point. *Cf. Moscony*, 927 F.2d at 742 ("When a trial court finds an actual conflict of interest which impairs the ability of a criminal defendant's chosen counsel to conform to with the ABA Code of Professional Responsibility, the court should not be required to tolerate an inadequate representation of a defendant."). Moreover, the court is confident that Schwartzman will not permit an interference of his professional judgment or with the attorney-client relationship in the future, and will not receive fees from the legal defense fund should the receipt of such funds cause him to violate any RPC, notably Rule 18(f). Specifically, I find that Schwartzman has and will continue zealously to respect his client's interests and give unbiased advice regarding the benefits of cooperating against other potential defendants regardless of the source of his payments. In short, payment from the trust will not adversely effect his performance.

Additionally, the court engaged in a lengthy colloquy with Luchko wherein Luchko knowingly, intelligently and voluntarily waived any potential conflict relating to this legal defense fund, even assuming the Senator has created the trust fund and is heavily involved in securing payments for it. The court also notes that the government is satisfied with Schwartzman's representations and Luchko's waiver, and does not oppose the court's exercise of

its discretion in accepting Luchko's waiver. (Gov't's Supp. Br. at 10.) Thus, the court finds that Luchko has given his informed consent and the court will accept Luchko's knowing, intelligent and voluntary waiver and will not disqualify Schwartzman.

IV. Schwartzman's Representation of Witness A

Schwartzman represents Witness A, whom the government now says it may call as a witness at defendant Luchko's trial. The comments to Rule 1.7 state: "[A] directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit." § 81.4 (Rule 1.7, cmt. 6). A similar situation was the subject of *United States v. Wheat*, 486 U.S. 153 (1988), where the Supreme Court held that the defendant was not entitled to counsel of his choice where that attorney also represented a witness the government intended to call at trial. *Wheat*, 486 U.S. at 164. The attorney, because of his prior representation of the witness, "would have been unable ethically to provide that cross examination," even in the face of a waiver by all relevant parties. *Id.*

The Third Circuit has likewise proscribed such a situation, stating that "[c]onflicts of interest arise whenever an attorney's loyalties are divided, and an attorney who cross-examines former clients inherently encounters divided loyalties." *Moscony*, 927 F.2d at 750. The court in that case went on to hold that the district court had properly disqualified the defendant's trial counsel, finding that the attorney could have used information learned from former clients to cross-examine and impeach them at trial. *Id.* A similar situation arose in *Voight* where the attorney had represented two clients for the purposes of responding to grand jury subpoenas,

before he represented the defendant. *Voight*, 89 F.3d at 1078. One of those former clients was likely to testify at the defendant's trial thus, "there was a strong possibility that [the former client] might face cross examination by a former attorney [and] there was a serious potential for a conflict of interest, which . . . warranted disqualification." *Id.*

On the other hand, the court found a distinguishable situation in *United States v. Hawkins*, U.S. Dist. LEXIS 17732 (E.D. Pa. Aug. 26, 2004). In that case, the government moved to disqualify the defendant's counsel on the ground that the attorney had previously represented the defendant's secretary when she was called before the grand jury and now the government planned to call the secretary at trial. *Hawkins*, U.S. Dist. LEXIS 17732, at **3-6. The court declined to disqualify the attorney, finding that the secretary's testimony was peripheral and the government did not assert that it was relying on it "completely or even substantially" to prove the falsity of the defendant's testimony. *Id.* at *19. The court additionally found two other considerations supporting its decision not to disqualify. First, the secretary did not join in the motion to disqualify, but had waived any conflict, thereby counseling against disqualification because "courts should be hesitant to grant a motion to disqualify defense counsel when the witness, whose interests the government is supposedly protecting, does not demand disqualification in order to protect those interests." *Id.* at **22-23 (citations omitted). And second, co-counsel who had not previously represented the secretary would cross-examine her at trial, rather than the attorney who had formerly represented her. *Id.*

At this time, the government represents that calling Witness A at Luchko's trial is only a possibility and testimony would regard a matter unrelated to Schwartzman's representation of Witness A. The government now asserts that this matter should be deferred pending future

developments to determine whether Witness A will be called to testify and, if so, as to what issues. Witness A has retained new counsel and Schwartzman has certified that he has not obtained any confidential information from Witness A that relates to his representation of Luchko. Schwartzman, Witness A and Luchko are all aware of the contents of the email in question and see no connection between that email and Schwartzman's representation of Witness A. Therefore, the court finds the situation to be akin to that in *Hawkins* because the government has not yet determined with any certainty whether it will call Witness A, the testimony appears to be peripheral, Schwartzman has not obtained confidential information that would compromise a cross-examination of Witness A, and Witness A has retained alternate counsel. Thus, the court does not find a conflict warranting disqualification at this time. Should the government decide to call Witness A at Luchko's trial and should his testimony present a conflict, the court may revisit this matter.

V. Stevens & Lee's Representation of the Senator

The imputation of conflicts of interest to lawyers in a law firm is governed by RPC 1.10. In relevant part:

> (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, or 1.9...
> ...
> (d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

§81.4 (Rule 1.10). The comments further illuminate the rule stating, "The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented." § 81.4 (Rule 1.10, cmt. 3). Further, "the law firm may

not represent a person with interests adverse to those of a present client of the firm, which would violate rule 1.7." § 81.4 (Rule 1.10, cmt. 5).

Schwartzman joined the firm of Stevens & Lee in 2005. The firm has more than 180 attorneys. Schwartzman asserted that the firm's representation of the Senator is limited to its representation of the bank of which he is the chairman and largest shareholder and it does not represent the Senator in his individual capacity. Schwartzman himself has no involvement with the firm's representation of the bank. Further, once the sale of the bank takes place, there will be no relationship between Stevens & Lee and the Senator. The court engaged in a colloquy with Luchko regarding any potential for conflict based on the firm's representation of the bank, and Luchko knowingly, intelligently and voluntarily waived any conflict. The government agrees that the waiver is sufficient to waive any possible conflicts of interest on this issue. The court accepts this waiver and will not disqualify Schwartzman.

VI. Conclusion

While cognizant that "[c]onflicts of interest arise whenever an attorney's loyalties are divided," *see Moscony*, 927 F.2d at 750, the court does not find any actual or potential conflict that overcomes the presumption that a defendant is entitled to counsel of his choice, as to either defendant Luchko or Eister. If, however, at any time in the future, defendant Luchko himself feels he is not receiving the independent professional judgment of his attorney or that it has been interfered with, or that he himself cannot act independently, he may petition the court for a change of counsel. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
LEONARD P. LUCHKO	:	NO. 06-319-01
MARK C. EISTER	:	-02

ORDER

AND NOW, this day of November, 2006, upon consideration of the government's motion for hearing regarding possible conflicts of interest (Document No. 21), the defendants' responses, the hearing held on October 12, 2006 and the supplemental briefs by the parties thereafter, **IT IS HEREBY ORDERED** that:

1. The government's motion for a hearing is **GRANTED**, the hearing having been held on October 12, 2006.

2. There is no actual or potential conflict of interest with reference to the payment of defendants' legal fees by the Pennsylvania Senate in accordance with its standard practice during the time that defendants were employed by that body and, to the extent that there is any such conflict, both defendant Luchko and defendant Eister have knowingly, intelligently and voluntarily waived the same, which waiver the court accepts.

3. Counsel for defendant Eister, Brian J. McMonagle, has been or will be paid by the federal government as a CJA lawyer for the time that he has represented defendant Eister since the termination of Eister's employment by the Pennsylvania Senate so that there is no actual or potential conflict of interest with reference to McMonagle's representation of defendant

Eister and, to the extent there is, defendant Eister has knowingly, intelligently and voluntarily waived any such conflict, which waiver the court accepts.

4. The payment of Luchko's legal fees by the legal defense trust fund constitutes an actual conflict of interest. However, the court finds that defendant Luchko has knowingly, intelligently and voluntarily waived any actual or potential conflict of interest on the basis that the Senator (a potential co-defendant) is or may be substantially involved in establishing the trust fund and soliciting payments to the trust fund, which waiver the court accepts. The court further finds that Luchko's counsel, James C. Schwartzman, Esq. has not and will not allow any interference with his independent professional judgment or the client-lawyer relationship in representing his client.

5. The prior representation of Witness A and prior and current representation of Luchko by Schwartzman does not constitute an actual conflict of interest. It does represent a potential conflict of interest; however, the court will await further developments with reference to whether that potential conflict arises and the extent of such potential conflict, if it does arise.

6. The representation of a bank in which the Senator has a substantial financial interest by Stevens & Lee represents a potential conflict of interest; however, there are no issues relating to the protection of confidential information and to the extent that there are any questions of client loyalty, Luchko has knowingly, intelligently and voluntarily waived any such conflict, which waiver this court accepts.

7. This order is without prejudice to the right of defendant Luchko to petition the court *pro se* for a change of counsel if at any time he feels that he is not getting independent professional advice from Schwartzman or that it is being interfered with, or that Luchko feels that he himself cannot act independently from any other defendant or potential defendant as a

result of any of the circumstances set forth hereinabove.

William H. Yohn Jr., Judge